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IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

MAK, JR., CLERK

No. **77-536**

MIRIAM WINTERS, on behalf of herself and all
others similarly situated,

Petitioner,

against

ALAN D. MILLER, M.D., individually and as Commissioner of
Mental Hygiene of the State of New York; FRANCIS J. O'NEILL,
M.D., individually and as Director of Central Islip State Hos-
pital; and Doctors H. BLANKFELD, DUSAN KOSOVIC, SANDRA
GRANT, GERALD OLLINS, CHRISTINE JORDAN, THOMAS DaCORTA,
and CATHERINE DROMGOOLE, and other doctors on the staffs of
Bellevue and Central Islip State Hospitals whose names are
unknown to plaintiff,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION**Opinions Below**

The opinion of the United States Court of Appeals for
the Second Circuit, decided June 2, 1977, is unreported
and is annexed to the petition (Appendix, pp. A1-A4).
The opinion of the United States District Court for the
Eastern District of New York (JUDD, J.), dated Decem-
ber 16, 1975, is unreported and is annexed to the petition
(Appendix, pp. A5-A41). The opinion of the United States

District Court for the Eastern District (MISHLER, J.), dated March 1, 1977, is unreported and attached to the petition (Appendix, pp. A42-A51). The opinion of the United States Court of Appeals for the Second Circuit, decided May 26, 1971, and sometimes referred to in the petition as the "first" Second Circuit opinion, is reported at 446 F. 2d 65 and is annexed to the petition (Appendix, pp. A52-A70).

Jurisdiction

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

Question Presented

In an action brought by a former mental patient pursuant to 42 U.S.C. § 1983 for money damages against doctors on the staff at the institution where plaintiff had been lawfully committed,

Was the jury verdict in favor of the four State defendants in error when it was proven at the trial that they did not have personal knowledge of the acts complained of and that, if they had, that there was no reason to believe that such acts might be subject to constitutional restrictions?

Statement of Facts

Plaintiff was taken in an ambulance to Bellevue Hospital on May 2, 1968, after she had been involved in a noisy dispute with the manager of the hotel where she was residing. She spent eleven days at Bellevue Hospital and was given medication by injection and mouth during that time. On May 7, 1968, a two-physician certificate was issued after medical examination certifying that the patient was mentally ill and a proper subject for care and treatment in a State institution.

Accordingly, plaintiff was transferred to Central Islip State Hospital, where she was informed of her right to a hearing to challenge her admission. She did not challenge that admission and after one month she became a voluntary patient and was later discharged.

On July 3, 1969, plaintiff commenced an action against doctors employed by the City of New York (Bellevue Hospital) and the State of New York (Central Islip State Hospital). This brief only concerns itself with the assertion of liability against the State defendants for monetary damages as a result of medication given to the plaintiff during her stay at Central Islip State Hospital, this after the verdict of the jury against the plaintiff. The State defendants who are being defended by the Attorney General of the State of New York in this action are Dr. Dromgoole, Dr. DaCorta and Dr. Miller from Central Islip Hospital, and the Commissioner of Mental Hygiene, Dr. O'Neill. All these defendants are sued both individually and in their official capacities.

Plaintiff alleges in the complaint that the medical treatment administered to her by the Doctors at Central Islip was over her objection and her clearly stated religious beliefs (she is a Christian Scientist), causing her pain and suffering, and she asks for money damages.

Defendants moved for summary judgment, which was granted by the District Court (TRAVIA, J.) on November 21, 1969, *Winters v. Miller, et al.*, 306 F. Supp. 1158.

An appeal was taken to the Court of Appeals for the Second Circuit from Judge Travia's order, which on May 26, 1971, reversed the decision of the District Court and remanded "the case to the District Court with instructions that it proceed to trial on the merits," *Winters v. Miller, et al.*, 446 F. 2d 65, 71. A petition for certiorari was denied. 404 U.S. 984 (1971).

From the evidence presented at trial it became clear that none of the State defendants had the personal knowledge

and involvement with plaintiff which would be necessary for personal liability pursuant to 42 U.S.C. § 1983. See Appendix to Petition, A5-A41 for the trial court's opinion. Consequently the jury found in favor of the defendants.

Plaintiff appealed the trial court opinion to the Court of Appeals, which affirmed in an exceedingly brief opinion.

Relevant Statute

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Reasons for Denying Petition for Certiorari

There is no substantial federal question: the case does not turn upon the issue of whether or not plaintiff was denied the right to freely exercise her religion, as plaintiff alleges, but, rather, upon the issue of whether or not defendants had personal knowledge of the acts complained of and whether they were aware that such acts might be subject to constitutional restrictions. Plaintiff failed to sustain the burden of proof as to these issues and the jury found in favor of defendants.

I. Personal Knowledge and Involvement: A Prerequisite to Monetary Liability

The evidence and testimony at the trial before Judd, J. (Appendix to Petition, pp. A5-A41) indicates that none of the State defendants had the personal knowledge or in-

volvement necessary to be held personally liable for money damages pursuant to 42 U.S.C. § 1983. The relationship of each doctor to the complained-of facts was fully examined at the trial, and this Court is respectfully referred to the trial court opinion for its findings: as to Dr. Miller, see Appendix to Petition, pp. A21-A22, A37; as to Dr. O'Neill, pp. A19-A21; as to Dr. Dromgoole, pp. A17-A18, A36; and as to Dr. DaCorta, p. A19.

The requirement of personal involvement is a strict prerequisite to the imposition of monetary liability in a § 1983 action, *Mukmuk v. Commissioner*, 529 F. 2d 272, 275 (2d Cir., 1976), *cert. den.* 426 U.S. 911 (1976); *Johnson v. Glick*, 481 F. 2d 1028, 1033-34 (2d Cir.), *cert. den.* 414 U.S. 1033. See also *Martinez v. Mancusi*, 443 F. 2d 931 (2d Cir., 1970), *cert. den.* 401 U.S. 983; *Wright v. McMann*, 460 F. 2d 136 (2d Cir., 1972).

What emerges from these cases is the need of a highly specific link between a defendant and an alleged wrong. These links consist of personal knowledge, bad faith, and direct responsibility. Those links do not exist in this case.

The question of the extent to which public officials are protected from liability when they have acted in good faith has recently been discussed in the cases of *Wood v. Strickland*, 420 U.S. 303 (1975), and *Scheuer v. Rhodes*, 416 U.S. 232 (1974). In *Scheuer*, this Court held that officers of the executive branch of government were entitled to a qualified immunity of varying scope, the variation being dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time.

The standard of qualified immunity was clarified in *Wood v. Strickland*, 420 U.S. 308 (1975), a § 1983 suit against school administrators and school board members. There the court found that the appropriate standard contains both a subjective element of good faith and an objec-

tive element of reasonableness. The court held that an official could not be held liable for damages in the absence of improper motive or disregard as to clearly established constitutional rights.

It is clear from the record below that the defendants acted in good faith and that there was no clearly established constitutional right in the statute protecting plaintiff from the complained-of acts.

II. The Law of the Case

Plaintiff's claim that the Court of Appeals in its latest opinion (Appendix to Petition, pp. A1-A5) failed to follow the law of the case in its first opinion (Appendix, pp. A52-A70) is without merit.

Upon being served with the complaint in this action, plaintiff moved for summary judgment, which motion was granted by the District Court for the Eastern District of New York (TRAVIA, D.J.) on November 21, 1969, *Winters v. Miller, et al., supra*.

The Court of Appeals reversed, "having concluded, therefore, that the appellant has stated a claim on which relief may be granted, we remand the case to the district court with instructions that it proceed to trial on the merits." (Appendix, p. A63).

At the trial plaintiff objected to the fact that she was required to prove that her constitutional rights had been violated, claiming that the only issue was one of damages, reasoning that the Court of Appeals in its first opinion had adjudicated the issue of defendants' liability.

It is indeed a novel and tenuous argument to assert that the denial of a motion for summary judgment is an adjudication on the merits. Neither the District Court nor the Court of Appeals in its later opinion were convinced, stating that all that had been decided in the first opinion was that the District Court had erred in granting summary

judgment and that plaintiff had to be given an opportunity for trial before judge and jury.

Pursuant to that opinion, plaintiff was given an opportunity to present her case before a judge and jury, who found for defendants.

Plaintiff, not content, now petitions this Court with the same argument, to wit, that the law of the case was not followed by the Court of Appeals in its later opinion, otherwise a new trial would have been ordered.

This argument is clearly without substance. Indeed, there is no conflict between the two decisions of the Court of Appeals. But, even if there were, such a conflict would not be the basis for granting a writ of certiorari, since the later decision is considered controlling within the circuit. Thus the law of the case argument, so stressed in the petition, also is without merit.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: New York, New York
November 7, 1977

Respectfully submitted,

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